HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 66 of 2001

Ram Chandra
S/o late Raja Ram
R/o village Sisora
Post Sitarganj
P.S. Sitarganj
District U.S. Nagar .....Applicant

Versus

1. Judicial Magistrate, Khatima
   U.S. Nagar
2. State of Uttaranchal
3. S.P., U.S. Nagar
4. S.H.O., P.S. Sitarganj
5. Ramesh Lal @ Pappu
   S/o Kharati
   R/o Kotafarm Sisora
   P.S. Sitarganj
   District U.S. Nagar
6. Cheda Singh @ Chinda @ Jogendra
   S/o Kisan Lal
   R/o village Khanpur
   Tehsil and post- Gadarpur
   P.S. Gadarpur
   District U.S. Nagar .....Respondents

Hon'ble J.C.S. Rawat, J.

The petitioner under section 482 Cr.P.C. has been filed against the order dated 8.12.2000 passed by the Judicial Magistrate, Khatima, U.S. Nagar in Criminal Case No. 370/ 1998 under sections 279/304A/337/427 I.P.C.

Brief facts of the case are that when on 3.4.1998 Shankar Singh (deceased) was going towards Sitarganj on scooter with Baggo Bai alongwith his son, the tractor Mahindra whose owner is Kishan Lal-father of the respondent no. 6 dashed the scooter and due to which Shankar Singh succumbed to his injuries. The case under section 279, 304A, 337, 427 I.P.C. was registered. Thereafter, the chargesheet was submitted. During the trial, an application was filed by the complainant that the court of inquiry conduced by the

Army Officer may be taken on record as evidence, in which the Army Officer had recorded the statement of the witnesses and certain findings were recorded by the army officer. Photocopy of the said inquiry report was produced before the Magistrate and the Magistrate has rejected the said application vide order dated 8.12.2001. Feeling aggrieved by the said order, the applicant has come up before this Court.

The learned counsel for the applicant contended that the Magistrate has erred in not considering the said application and the inquiry report conducted by the army personnel with regard to the accident. Perusal of the inquiry report conducted by the army personnel reveals that it was not an accident. Learned A.G.A. refuted the contention and contended that the complainant has no locus to file such application. As a matter of fact, such documents should have been given to the prosecutor, who in his turn would have filed the said documents alongwith the statement of Ram Chandra and the applicant should have taken this recourse instead of filing the application. Learned A.G.A. further contended that if the public prosecutor in the trial court feels that the said documents are required to be summoned from the army, he can summon the said documents.

Considering the contentions of both the parties, I am of the opinion that the complainant- Ram Chandra has no locus at this stage to file such application before the court below. If the public prosecutor feels that the said documents are required for the just and proper decision of this case, the said documents may be filed during the trial and original may be summoned from the army. The petition is dismissed accordingly.

(J.C.S. Rawat, J.)

Dated 16.06.2005
LSR